MALAYSIAN REPORTS

RE BAHADUN BIN HAJI HASSAN DECD.

[O.C.J. (Abdul Hamid J.) January 4, 1972]
[Kuala Lumpur — Originating Summons No. 284 of 1970]

Muslim Law — Nomination of widow as beneficiary in insurance policy — Whether amount payable direct to her as nominee — Whether widow can take beneficially — Whether amount forms part of the assets of the estate of the deceased.

Insurance — Life insurance policy — Provision for payment on death to named beneficiary — Assignment to beneficiary — Civil Law Act, s. 23.

In this case the deceased died and left him surviving a widow, two daughters, two sons and one aged mother. In his lifetime he had taken out a life insurance policy under which the sum assured was made payable to the wife of the assured or should she predecease the assured to his estate. The Official Administrator applied by way of originating summons for the determination of the following issues —

(a) whether the money nominated to the widow is valid and the amount could be paid direct to her as nominee;

(b) whether the nomination is void under Muslim Law and the amount forms part of the estate and should be subject to distribution according to Muslim Law.

Held: the sum payable under the policy should be paid to the widow for her own benefit and the sum did not form part of the assets of the estate of the deceased.

Case referred to:-

(1) *Re Man bin Minhat, decd.* [1965] 2 M.L.J. 1.

ORGINATING SUMMONS.

R. Aria Retnam for the Official Administrator.

K. A. Menon for the widow.

Lim Cheng Poh for one of the beneficiaries.

Abdul Hamid J. (delivering oral judgment): This was an application by way of Originating Summons brought by the Official Administrator West Malaysia for the determination of the following issues —

(1) Whether the money nominated to the widow Kontik Kamariah binti Ahmad under Policy No. 3511817 is valid and that the amount could be paid direct to her as nominee, or

(2) Whether the nomination is void under Muslim Law and that the amount forms part of the estate and should be subject to distribution according to Muslim Law.

The facts are not in dispute. Letters of Administration of the estate of Bahadun bin Haji Hassan, deceased, were granted to the Official Administrator West Malaysia on May 20, 1969 in Petition No. 207 of 1969.

The deceased died on July 28, 1968 and was survived by a widow, two daughters, two sons and an aged mother.

On January 8, 1952 the deceased took out a life insurance policy with Sun Life Assurance Company of Canada. Under the life policy Sun Life Assurance Company of Canada hereby agreed

"to pay the sum of £3,000 (the sum assured) which will become due and payable to Bahadun bin Haji Hassan on the 12th day of December 1971 (the endowment date) if the said Bahadun bin Haji Hassan (the life assured) is then living or will become due on the prior death of the life assured and will be payable on receipt and approval by the company of proofs of such death and of the title of the claimant to Kontik Kamariah binti Ahmad, wife of the life assured, or should she predecease the life assured to the estate of the life assured."

The question to be determined is whether the nominee can take beneficially the moneys due under the policy on the death of the assured or whether the moneys form part of the assured's estate on his death to be distributed among his beneficiaries.

Mr. R. Aria Retnam appeared for the Official Administrator, Mr. K. A. Menon for the respondent and Mr. Lim Cheng Poh for one of the beneficiaries.

Mr. Aria Retnam and Mr. Menon in their submissions cited the case of *Re Man bin Mihat, Deceased*[1] where Suffian J. (as he then was) held as follows —

(a) "by virtue of section 23 of the Civil Law Ordinance as the policy of assurance was effected by the assured on his life and expressed to be for the benefit of his wife, the moneys payable under the policy did not form part of the estate of the deceased;

(b) Muslim Law does not disentitle the widow to take beneficially as it is lawful for a Muslim to dispose of his property during his lifetime by way of a gift or through trustees."

It was contended by Mr. K. A. Menon that since the wife was named as beneficiary she was entitled to receive the money for her own benefit.

Mr. Lim Cheng Poh on the other hand argued that under Muslim Law the deceased could not dispose by will and in nominating the respondent as beneficiary the deceased was in effect making a will. Mr. Lim sought to distinguish the facts of this case with the facts in *Re Man bin Mihat, Deceased, supra,* stating that in *Re Man bin Mihat, Deceased, supra,* there was a valid gift *inter vivos* whereas in the present case no valid gift had been effected. To my mind there is no merit in the argument.

It would seem to me that when the deceased took out a life assurance policy with the Sun Life Assurance Company of Canada it was his intention that the respondent should receive the moneys due under the policy in the event of his death prior to the date of maturity of the policy provided of course the respondent survived him. If the respondent should predecease him and he should die prior to the date of maturity of the policy the money was to go to his estate. To construe in any other way would be untenable.

On the authority *Re Man bin Mihat, Deceased, supra,* I am also of the view that there was nothing in Muslim Law to prevent the deceased from making such a disposition in his lifetime of the policy money to the respondent on his death. There was a completed gift even though the gift was contingent upon the life assured predeceasing the respondent before the maturity of the life policy.

It is my finding that the disposition was in the circumstances a gift by the deceased to the respondent and such gift does not constitute a disposition by will.

For this reason it is my judgment that the sum payable under the policy should be paid to the respondent for her own benefit and this sum does not form part of the assets of the estate of the deceased

Order accordingly.